Supreme Court, U.S.
FILED
AUG 14 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. 88-2072

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM OF 1988

DANNY L. MILBURN,

Petitioner,
vs.

HAWKEYE BANK & TRUST N.A. OF CENTERVILLE-SEYMOUR f/k/a CENTERVILLE NATIONAL BANK,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

TO THE IOWA SUPREME COURT

PETITIONER'S REPLY

TO BRIEF OPPOSING CERTIORARI

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STATEMENT OF THE CASE IN REPLY

The Bank in its Brief in Opposition states at page 3 "The stay was partially lifted for purposes of proceeding with the appeal, but the Chapter 7 Bankruptcy is still pending at this time". Based upon the facts inherent in such statement and for its argument going totally outside the record in this case Bank asserts that no standing exists in Milburn.

However, Bank fails to mention that the following occurred in The United States Bankruptcy Court for the Southern District of Iowa, In Re Danny J. Milburn, Case No. 88-1831-C (Chapter 7), clearly demonstrating stake and standing.

On September 30, 1988, Thomas L. Flynn, Trustee, made his report without notice that he had abandoned the Real Estate herein concerned, and such was a no-asset case. Thereafter, Bank made bid to the Trustee for Milburn's redemption rights.

On November 23, 1988, in response to

actions of Bank and the Trustee, the Honorable Russell J. Hill entered order in such bankruptcy that the foregoing Trustee's No Asset Report be vacated and set aside.

On November 21, 1988, the Trustee gave notice that on December 21, 1988, subject to objection, he would sell "Any redemption rights the Debtor [Milburn] may have in connection with the foreclosure of the Debtor's farm by Hawkeye Bank and Trust Company. . ." to "Hawkeye Bank and Trust Company of Centerville, Iowa" for the consideration of "$500. cash". On December 8, 1988, Milburn made objection on various grounds including that such rights were personal to him, and the proposed sale denied to him the opportunity to bid for such rights, if necessary.

With the foregoing pending, on November 21, 1988, Bank made motion to the Bankruptcy Court asking that ". . . this court enter an order modifying the automatic stay for the limited purpose of allowing the Iowa Supreme

Court to adjudicate the issues as to the constitutionality of Iowa Code Section 628.4, which are pending before that court pursuant to the appeal instituted by the debtor, and Hawkeye's related cross-appeal. . . ". On December 8, 1988, Milburn joined Bank in requesting such relief from stay.

The Petition for Certiorari here is for final review and correction of the resulting Iowa Supreme Court decision.

After the decision of the Iowa Supreme Court, Bank gave notice to Milburn of its intent to sell such real property in total disregard of the bankruptcy proceeding.

ARGUMENT

I. THE PETITIONER REMAINS THE TRUE PARTY IN INTEREST.

The Trustee in Chapter 7 takes only that property which is not subject to prior security interests and which is not subject to exemption laws. The Trustee abandoned to Milburn and Bank the real property in

question. The Bank then made bid to the Trustee to purchase Milburn's redemption rights. Milburn objected, claimed such exemption rights to be personal to him, and demanded that he be afforded the right to also bid. Milburn and Bank are in contest over the redemption rights of Milburn. Both have a stake in the outcome of that contest which the Iowa Supreme Court decided adversely to Milburn. Milburn seeks review of that decision here. Milburn's personal and economic rights will rise or fall directly and proximately according to the decision of this Court. Warth v. Seldin, 422 U.S. 490 (1975). If the decision of the Iowa Court stands, Milburn has no redemption rights (including two years of possession) and he is harmed. If the Iowa decision falls, Milburn retains redemption, possession and homestead rights which are either personal to him or subject to purchase. Milburn clearly has standing.

Furthermore, Bank's argument proves too

much, and is itself a basis for reversal, for the reason that if there is no standing in this Court to determine such issue, then there was none in the Iowa Supreme Court either. If that is correct, the Iowa Supreme Court decision should be vacated so that the issue can be determined in the Bankruptcy Court.

II. NO STAYS WERE INVOKED OTHER THAN THOSE NECESSARY TO PRESERVE REDEMPTION AND HOMESTEAD RIGHTS.

Here, Bank is really seeking review of the Iowa Supreme Court decision, because the same argument was advanced by it there, and rejected. The Iowa Court recognized that any stays involved were to preserve rights on appeal and in reality merely supportive or ancillary to the primary issue - the constitutionality of the Iowa statute. Accordingly, the Iowa Court proceeded to decide that primary issue and which decision Milburn seeks reviewed here.

III. THE DECISION OF THE IOWA SUPREME COURT IS IN ERROR AND SHOULD BE VACATED.

The decision of the Iowa Court allows a state to tailor substantive property rights to be different for one who is or has been in federal bankruptcy. In so doing, it allows a state to circumvent the Supreme Law of the land and to invade that sphere pre-empted by federal law; allows forfeiture of valuable rights in violation of due process and equal protection guarantees; and in effect imposes sanction and penalty for having attempted reorganization in bankruptcy.

> "Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding. Uniform treatment of property interests by both state and federal courts within a state serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving "a windfall merely by reason of the happenstance of bankruptcy". (emphasis added). Butner v. United States, 440 U.S. 48, 55 (1978).

For federal bankrupcty law to be equally applied, state property rights within a state must remain consistent, uniform and non-varying to all. State definition making property rights different for one in or having filed bankruptcy inverts the Supremacy Clause. It renders state law supreme. It denies uniformity of treatment. It allows substantive property rights to be forfeited based solely upon the happenstance of bankruptcy. It penalizes those who have invoked federal due process.

The Iowa Court rationalized that the equity of redemption (which existed prior to sheriff's sale) did become a part of the bankruptcy estate and that because no statutory right of redemption existed at that time there was none forfeited by the bankruptcy stay. However as the dissenters on the Iowa Court observed, this is an overly restrictive interpretation which significantly frustrates the intended

operation of Title 11. Once sheriff's sale has occurred, a Chapter 11 or 12 Plan cannot cram down or stretch out the running of the state law redemption period. Justice v. Valley National Bank, 849 F.2d 605 (C.A. 8, 1988); In re DeMers, 853 F.2d 605 (C.A. 8, 1988; Bauer, Iowa's Homestead Exemption, pp 34-35 (Advanced Bankruptcy Procedures Seminar, Cedar Rapids, Iowa, July 27, 1989).

Furthermore, it is clear that IF MILBURN HAD NOT ATTEMPTED TO REORGANIZE IN BANKRUPTCY HE WOULD HAVE RETAINED THE STATUTORY RIGHT TO REDEEM HIS PROPERTY. Under Iowa law such right to redeem is not only a transferable property right (I.C.A. 628.25) BUT ALSO includes the right to possession of that real property during the two year redemption period (I.C.A. 628.3 facially states "one year" but under interpretation of the Iowa Supreme Court has been expanded to two years. FLB v. Arnold, 426 N.W.2d 153 (Iowa 1988)). Thus, as a direct and proximal result of his having invoked federal bankruptcy in effort

to reorganize, Milburn lost under Iowa law a transferable property right which included his right to POSSESS such property for two years following sheriff's sale. Such forfeiture resulted SOLELY from his having invoked federal due process.

CONCLUSION

Danny L. Milburn respectfully requests this Court to issue Writ of Certiorari to the Iowa Supreme Court to review and correct its decision. FURTHER, in the event the Court is of the opinion that standing is in fact a legitimate issue in this case that Writ of Certiorari also issue to the United States Bankruptcy Court for the Southern District of Iowa, In Re Danny J. Milburn, Case No. 88-1831-C (Chapter 7) pertaining to such issue. The Respondent has gone outside the record in making opposition, and the two proceedings would appear intertwined on that issue.

Respectfully submitted this ____ day of August, 1988.

Marlyn S. Jensen, P.C.

By_____

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ATTORNEY FOR PETITIONER.

DECLARATION OF PROOF OF SERVICE

I, Marlyn S. Jensen, counsel for Danny L. Milburn, under 28 USC 1746, do affirm and declare that a copy of the foregoing Petition and attached Appendix, as corrected, was served on John H. Neiman, 1119 High Street, Des Moines, Iowa 50308 by depositing such copy in a United States postal mailbox, with first-class postage prepaid in accordance with Rule 28.3 and Rule 28.4(a) of the Rules of the Supreme Court of the United States. Also, a copy of the Petition, Brief in Opposition and this Reply were sent by me to the Hon. Tom Miller, Attorney General of Iowa, Hoover Building, Des Moines, Iowa 50319.

I affirm that the foregoing is true and correct.

_____

Marlyn S. Jensen

Subscribed and sworn to before me on this ____ day of August, 1989

_____

NOTARY PUBLIC.